

International Union of Operating Engineers

LOCALS 542, 542-RA, 542-C, 542-D

ROBERT HEENAN
Business Manager

CHARLES PRISCOPO, Ass't Bus. Mgr.
JAMES REILLEY, President
MIKE MAZZA, Vice President

AFFILIATED WITH THE
AND BUILDING



AMERICAN FEDERATION OF LABOR
TRADES DEPARTMENT

THOMAS P. DANESE, Recording Secretary
JAMES T. JONES, Treasurer
TED JANEKA, Financial Secretary

1375 VIRGINIA DRIVE - SUITE 100, FORT WASHINGTON, PA 19034

(215) 542-7500

FAX: (215) 542-7557

December 2nd 2012

Lester Heltzer, Executive Secretary
Office of the Executive Secretary
National Labor Relations Board
1099 14th Street N.W. Room 11602
Washington, DC 20570-0001

RE: Hanson Aggregates B.M.C. Inc.
Cases 4-CA-3330, 4-CA-33508, 4-CA-33547,
4-CA-34290, 4-CA-34362, 4-CA-34363,
and 4-CA-34378

Dear Mr. Heltzer:

Please include this letter to the Unions objections on Compliance in the above Reference Cases.

Attached, is a "New" Formal Settlement Agreement proposed by Region 4. The Union is currently objecting to this Formal Settlement Agreement through the Office of General Counsel for a number of reasons, most importantly; because of the Compliance review before you of the above Cases. In no way should another Settlement Agreement be entertained until the matter of above is concluded.

The Region further has now included in this Settlement Agreement Case 4-CA-37998. This Case as noted in the Attached is an unlawful violation to the Act occurring in February 2011 or 10 months before the Regional Director found Compliance was met on 4-CA-33330 et al. While the Union has argued that no 'Clean Hands' was ever proven by the employer to achieve full compliance of the above reference Cases, the Region now discloses Charge (4-CA-37998) in the Formal Settlement Agreement along with Case 4-CA-69822 which I have argued in my letter of October 15th is a direct violations to the above reference Cases.

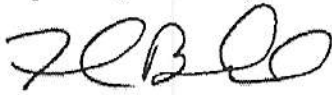
Simply, in the time frame of Compliance, the employer has two strikes against them as in 4-CA-37998 and 69822. The Third Strike can be found in the Formal Settlement agreement in Hanson Aggregates, BMC, Inc. Cases 4-CA-34678, 4-CA-35134, 4-CA-35140, 4-CA-35189, 4-CA-35487 4-CA-35553, 4-CA-36099, 4-CA-36256, 4-CA-36468, 4-CA-36530, 4-CA-37161 and 4-CA-37348. Both 4-CA-37998 and 69822 are not only hinged to the Compliance of 4-CA-33330 et al, but also the Formal Settlement Agreement of Cases 4-CA-34678, 4-CA-35134, 4-CA-35140, 4-CA-35189, 4-CA-35487 4-CA-35553, 4-CA-36099, 4-CA-36256, 4-CA-36468, 4-CA-36530, 4-CA-37161 and 4-CA-37348.

The Region adjudicator duties here are in the same manner as an Ostrich head in the sand. While Management from the Region may want to rid these Cases from their workload, they ignore their enforcement duties of a Federal Court Order and NLRB Board Order. In all these Cases the Region has previously found the employer violated changing terms and conditions of employment without bargaining, animus to union supporters, etc. Now, the Region wants to enter a third Formal Settlement Agreement with this Business so a quick remedy can hopefully close these Cases since this employer just continually thumbs its nose at the Region. Giving any consideration to this continuous unlawful employer is an abomination to the Act.

The Union has argued that Compliance has not been met in many ways and one monetary of Skill Points not accurately computed by the Region. The Region Compliance Officer has further ignored the company discontinuation of that program which is a direct violation the Board Orders of the above, and has only computed back pay for Skill points through December 2009. Another 3 years has now lapsed without any further follow up on this one element or restitution paid, and therefore the words '*make whole*' in the Order, have never been adhered.

It is time for the Board and you Sir, to channel 4-CA-37998 and 69822 to Contempt, a recommendation by the Region 4 Field Attorney who investigated these Cases, but then was later denied by the Regional Director to pursue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'F. Bankard', with a stylized flourish at the end.

Frank Bankard
IUOE Local 542

Cc: Region 4 NLRB
John Nadler

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

HANSON AGGREGATES BMC, INC.

and

Cases 4-CA-37998 and
4-CA-69822

INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 542,
AFL-CIO

FORMAL SETTLEMENT STIPULATION

I. INTRODUCTION

Through this Formal Settlement Stipulation (the Settlement Stipulation), the undersigned parties agree that, upon approval of the Settlement Stipulation by the Board, a Board Order in conformity with its terms will issue and a court judgment enforcing the Order will be entered. The parties also agree to the following:

II. JURISDICTION

1. Respondent is a Delaware Corporation with a quarry in Penns Park, Pennsylvania (herein, the Quarry) and is engaged in extracting and processing crushed stone and in manufacturing bituminous asphalt.

2. In conducting its business operations during the past year, and on an annual basis, Respondent has sold and shipped goods valued in excess of \$50,000 directly to points located outside the Commonwealth of Pennsylvania.

3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

III. LABOR ORGANIZATION STATUS: The Union is a labor organization within the meaning of Section 2(5) of the Act.

IV. PROCEDURE

1. **FILING AND RECEIPT OF CHARGES** On March 1, 2011, and June 20, 2011, respectively the Union filed a charge and an amended charge in Case 4-CA-37998. The charge and amended charge were served on Respondent on March 2, 2011, and June 22, 2011, respectively. On November 30, 2011, the Union filed a charge in Case 4-CA-69822. This charge was served on Respondent on December 1, 2011. Respondent acknowledges receipt of the charges and the amended charge.

2. **ISSUANCE OF COMPLAINTS** On September 27, 2011, a Complaint and Notice of Hearing issued in Case 4-CA-37998 alleging that Respondent violated the National Labor Relations Act. Respondent acknowledges receipt of a copy of the Complaint and Notice of Hearing in Case 4-CA-37998, which was served by certified mail on September 27, 2011. On September 27, 2012, a Complaint and Notice of Hearing issued in Case 4-CA-69822 alleging that Respondent violated the National Labor Relations Act. Respondent acknowledges receipt of a copy of the Complaint and Notice of Hearing in Case 4-CA-69822, which was served by certified mail on September 27, 2012.

3. **WAIVER** Respondent hereby withdraws its Answer to the Complaint in Case 4-CA-37998, which it filed on October 11, 2011. Respondent also hereby withdraws its Answer to the Complaint in Case 4-CA-69822, which it filed on October 11, 2012. All parties waive the following: (a) hearing; (b) administrative law judge's decision; (c) filing of exceptions and briefs; (d) oral argument before the Board; (e) the making of findings of fact and conclusions of law by the Board; (f) and all other proceedings to which the parties may be entitled under the Act or the Board's Rules and Regulations.

4. **THE RECORD** The entire record in this matter consists of the following documents: this Settlement Stipulation; the charge and amended charge in Case 4-CA-37998; the Complaint and Notice of Hearing in Case 4-CA-37998; the charge in Case 4-CA-69822; and the Complaint and Notice of Hearing in Case 4-CA-69822. Copies of these documents are attached as Exhibits A-1, A-2, B, C, and D.

5. **ENTIRE AGREEMENT – NON-ADMISSION OF VIOLATIONS** This Settlement Stipulation constitutes the entire agreement between the parties and there is no agreement of any kind, verbal or otherwise, that alters or adds to it. It is understood that by signing the Settlement Stipulation, Respondent does not admit that it has violated the Act.

6. **SCOPE OF THE SETTLEMENT STIPULATION AND RESERVATION OF EVIDENCE** This Settlement Stipulation settles only the allegations in the above-captioned cases as described above, and does not constitute a settlement of any other case(s) or matter(s). The Settlement Stipulation does not preclude persons from filing charges, the Acting General Counsel from prosecuting Complaints, or the Board and the courts from finding violations with respect to any other case(s) or matter(s), regardless of whether such matter(s) are known to, or are readily discoverable by, the Acting General Counsel or the Union. The Acting General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned cases for any relevant purpose in the litigation of this or any other case(s).

and an Administrative Law Judge, the Board, and the courts may make findings of fact and/or conclusions of law with respect to that evidence.

7. **EFFECTIVE DATE.** This Settlement Stipulation is subject to the approval of the Board and it does not become effective until the Board has approved it. The Regional Director or the Acting General Counsel will file with the Board this Settlement Stipulation and the documents constituting the record as described above. Once the Board has approved the Settlement Stipulation, Respondent will immediately comply with the provisions of the Order as set forth below.

V. **FACTS:**

1. The following employees of Respondent at the Quarry, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Motor Operators, Plant Operators, Truck Drivers, Laborers, Mechanics, Welders and maintenance employees, excluding all other employees, including temporary employees, Laboratory Technicians, office clerical employees, managers, guards and supervisors as defined in the Act.

2. On September 9, 2004, in Case 4-RC-20874, the Union was certified as the exclusive collective bargaining representative of the Unit.
3. At all times since September 9, 2004, based on Section 9(a) of the Act, the Union has been the exclusive collective bargaining representative of the Unit.

VI. **ORDER**

Based upon this Settlement Stipulation and the record as described above, and without any further notice of proceedings, the Board may immediately enter an Order providing as follows:

Respondent, Hanson Aggregates BMC, Inc., its officers, agents, and representatives, at its Penns Park, Pennsylvania facility, shall:

1. Cease and desist from:
 - (a) Threatening to discharge employees because they engage in Union activity.
 - (b) Threatening employees with unspecified reprisals if they engage in Union activity.
 - (c) Threatening to sue employees and take back money Respondent has paid to them if they engage in Union activity.

(d) Telling employees that they should quit if they do not like the Respondent.

(e) Suspending its employees or in any other manner discriminating in regard to their hire or tenure of employment or other term or condition of employment in order to discourage them from supporting International Union of Operating Engineers Local 542, AFL-CIO, or any other labor organization.

(f) Implementing a compensation plan for Unit employees scheduled to work on a day when Respondent curtails its operations due to a weather emergency without first giving the Union notice and a sufficient opportunity to bargain and absent an overall impasse in good faith bargaining for a collective-bargaining agreement.

(g) Implementing new terms and conditions of employment of Unit employees without first giving the Union notice and a sufficient opportunity to bargain and absent an overall impasse in good faith bargaining for a collective-bargaining agreement.

(h) In any other manner, interfering with, restraining or coercing its employees in the exercise of their right to self-organization: to form labor organizations, to join or assist the Union or any other labor organization, to bargain collectively through representatives of their own choosing; to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative actions necessary to effectuate the policies of the Act:

(a) Within 14 days of the Board's Order, remove from James Quarles' files any reference to the suspension of James Quarles and within three days thereafter, notify James Quarles, in writing, that this had been done and that the suspension will not be used against him in any way.

(b) Make James Quarles whole for any loss of pay he may have suffered by reason of his suspension, by payment to him in the total amount of \$375.36 representing \$369.36 backpay and \$6.00 interest.

(c) Make the following employees whole for any loss employees may have suffered as a result of Respondent's unilaterally implemented compensation plan of September 9, 2011, by payment or vacation restoration in the manner set forth next to the employee's name.

Name	Total Amount	Backpay	Interest
Robert Ashton	\$127.24	\$122.57	\$4.67
Musaali Bond	\$145.42	\$140.08	\$5.34
Donald Edwards	\$115.62	\$111.37	\$4.25
Donald Filkins	\$176.23	\$169.76	\$6.47
Gary Hale	\$115.62	\$111.37	\$4.25

Dennis Hellyer	\$127.24	\$122.57	\$4.67
Victor Morrison	\$138.80	\$133.70	\$5.10
Michael Murchison	\$115.62	\$111.37	\$4.25
Donald Pierce	\$145.42	\$140.08	\$5.34
Christopher Schane	\$115.62	\$111.37	\$4.25
Richard Fitch	Restore 8 hours of vacation leave		
Darlene Foerster	Restore 8 hours of vacation leave		
Klaus Frede	Restore 8 hours of vacation leave		
Joseph Rainey	Restore 7 hours of vacation leave		
John Ricketts	Restore 7 hours of vacation leave		
Kevin Solt	Restore 7 hours of vacation leave		
Robert Weber	Restore 8 hours of vacation leave		
Matthew Williams	Restore 7 hours of vacation leave		

(d) Within 14 days after service by the Region, post copies of the attached Notice marked as Appendix A at its facility in Penns Park, Pennsylvania. Copies of the Notice, on forms provided by the Regional Director for Region Four, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification, on a form provided by the Region, attesting to the steps Respondent has taken to comply herewith.

VII. ENFORCEMENT OF ORDER

The United States Court of Appeals for any appropriate circuit may, on application by the Board, enter its judgment enforcing the Order of the Board in the form set forth above. Respondent waives all defenses to the entry of judgment, including compliance with the Order of the Board, and its right to receive notice of the filing of an application for the entry of such judgment, provided that the judgment is in the words set forth above.

However, Respondent shall be required to comply with the affirmative provisions of the Board's Order after entry of judgment only to the extent it has not already done so.

HANSON AGGREGATES-BMC, INC.

Dated: 11/13/12

By: Robert R. R. R.

**INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 542, AFL-CIO**

Dated: _____

By: _____

Approval recommended by:

Edward J. Bonett, Jr.
Counsel for the Acting General Counsel
National Labor Relations Board
Region Four
615 Chestnut Street, 7th Floor
Philadelphia, PA 19106-4404
(215) 597-9619

Date

Approval recommended by:

Regional Director, Region Four
National Labor Relations Board

Date

Approved:

By: _____
Office of the Acting General Counsel
National Labor Relations Board
Washington, DC 20570

or

Regional Director, Region Four
615 Chestnut Street, 7th Floor
Philadelphia, PA 19106

Dated: _____

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NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board

An Agency of the United States Government

POSTED PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A
CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF APPEALS

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union-
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT do anything that interferes with these rights.

WE WILL NOT suspend you because you support International Union of Operating Engineers
Local 542, AFL-CIO (the Union).

WE WILL NOT threaten to fire you because you engage in Union activity.

WE WILL NOT threaten you with unspecified reprisals because you engage in Union activity.

WE WILL NOT threaten to sue you and take back money we have paid to you because you
engage in Union activity.

WE WILL NOT tell you that you should quit if you do not like us.

WE WILL NOT refuse to bargain with the Union as the exclusive collective-bargaining
representative of our employees in the Unit described below by unilaterally implementing new
terms and conditions of employment absent an overall impasse in good faith bargaining for a
collective-bargaining agreement and without first giving the Union notice and opportunity to
bargain.

All full-time and regular part-time Motor Operators, Plant
Operators, Truck Drivers, Laborers, Mechanics, Welders and
maintenance employees, excluding all other employees, including
temporary employees, Laboratory Technicians, office clerical
employees, managers, guards and supervisors as defined in the
Act.

WE WILL NOT implement a compensation plan for Unit employees scheduled to work on a
day when we curtail operations due to weather conditions without first giving the Union notice
and a sufficient opportunity to bargain and absent an overall impasse in good faith bargaining for
a collective-bargaining agreement.

Paul
11/3/12

WE WILL NOT, in any manner, interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the National Labor Relations Act. Some of those rights are described at the top of this notice.

WE WILL make James Quarles whole for any loss of pay he may have suffered because we suspended him.

WE WILL remove from James Quarles' files any reference to his suspension, and **WE WILL** notify him in writing, that this has been done and that the suspension will not be used against him in any way.

WE WILL make the employees listed on the attached chart whole for any loss the employee may have suffered as a result of our unilaterally implemented compensation plan for September 9, 2011, by payment or vacation restoration in the manner set forth next to the employee's name on the chart.

Appendix A
[Facsimile of Notice; Do Not Post]

[Handwritten signature]
11/13/12